



July 20, 2018

**Via ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

**Re: *Ex Parte* Filing of the Fiber Broadband Association on Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84**

Dear Ms. Dortch:

The Fiber Broadband Association (“FBA”) generally supports the proposed reforms to the pole attachment process in the draft Third Report and Order in *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (“Draft Order”)<sup>1</sup> and urges their adoption at the August 2<sup>nd</sup> meeting of the Federal Communications Commission (“Commission”).

Because poles, ducts, and conduit are critical infrastructure for telecommunications and cable (as well as broadband) network deployments, some forty years ago, the US Congress adopted the pole attachment statute<sup>2</sup> to facilitate access to this infrastructure on a reasonable and

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<sup>1</sup> *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket Nos. 17-84, 17-79, Public Draft, Third Report and Order and Declaratory Ruling, FCC-CIRC1808-03 (July 12, 2018) (“Draft Order”). *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128 (2017).

<sup>2</sup> 47 U.S.C. § 224. *See* Communications Act Amendments of 1978, Pub. L. No. 95-234, 92 Stat. 33 (1978).

non-discriminatory basis. Ever since, the Commission has been diligent in implementing the law, regularly identifying barriers and adopting solutions. The last major reforms to the implementing regulations were in 2011, when, among other things, the Commission prescribed the four-part process for undertaking attachments: Application Review and Survey, Estimate, Attacher Acceptance, and Make-Ready.<sup>3</sup> While the 2011 reforms were beneficial, not all issues were addressed, and new barriers subsequently developed. Stakeholders from all sides, including the FBA,<sup>4</sup> have submitted comments and other filings to the Commission identifying barriers to attachments and proposing fixes to address those concerns. In addition, the Commission's Broadband Deployment Advisory Committee ("BDAC") has aired many of these same concerns and, after substantial discussion, adopted numerous proposals to facilitate the pole attachment process.<sup>5</sup> In sum, the Commission has before it a robust record, ripe for a decision.

The FBA thus is pleased the Commission will consider the Draft Order at its next meeting. The Draft Order includes a series of amendments to existing rules and the adoption of new rules that have achieved substantial support and will reform the pole attachment process in meaningful ways. More specifically, the FBA believes the following rules would significantly facilitate the attachment process:

**Permitting New Attachers to Use One-Touch Make-Ready ("OTMR") for Simple Make-Ready for Wireline Attachments in the Communications Space** – The FBA agrees with the Draft Order's finding that "OTMR speeds and reduces the cost of broadband deployment by allowing the party with the strongest incentive – the new attacher – to prepare the pole quickly to perform all of the work itself, rather than spreading the work across multiple parties."<sup>6</sup> OTMR holds out the promise of bringing all-fiber broadband service to many more locations in a much shorter timeframe. The FBA supports the new rule permitting a new attacher to use OTMR for simple make-

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<sup>3</sup> *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011).

<sup>4</sup> *See, e.g.*, Comments of the Fiber Broadband Association on the Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84 (June 15, 2017); Comments of the Fiber Broadband Association on the Further Notice of Proposed Rulemaking, WC Docket No. 17-84 (Jan. 17, 2018) ("FBA FNPRM Comments"); Reply Comments of the Fiber Broadband Association on the Further Notice of Proposed Rulemaking, WC Docket No. 17-84 (Feb. 16, 2018) ("FBA FNPRM Reply Comments"); *Ex Parte* Filing of the Fiber Broadband Association on Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 (Apr. 10, 2018).

<sup>5</sup> *See* BDAC, Report of the Competitive Access to Broadband Infrastructure Working Group (Jan. 23-24, 2018), available at <https://www.fcc.gov/sites/default/files/bdac-competitiveaccess-report-012018.pdf> ("BDAC Report").

<sup>6</sup> Draft Order at para. 2.

ready for wireline attachments in the communications space.<sup>7</sup> The FBA also supports the Draft Order's conclusion that no federally-imposed indemnification is warranted for OTMR because new attachers are already directly liable for any damage they cause to poles and other attachments.<sup>8</sup> A broad indemnification provision would significantly restrain attachers' ability to elect OTMR, thus greatly reducing the benefits of the Draft Order. Going forward, while FBA believes the Draft Order's proposed OTMR rule will prove beneficial, the Commission should view it as only an initial step toward permitting OTMR for complex make-ready as well.

**Codifying the Commission's Overlashing Precedent** – The record establishes that overlashing significantly expedites and lowers the cost of fiber deployment and that overlashers have strong incentives to attach responsibly to protect pole safety and reliability.<sup>9</sup> The Commission thus has a sound basis to conclude that enabling overlashing without approval from the utility “will hasten deployment by resolving disagreements over whether utilities may impose procedural requirements on overlashing by existing attachers”<sup>10</sup> and to adopt the new rule.<sup>11</sup> While the FBA does not believe there is sufficient basis to permit utilities to have up to 15-days' advance notice of overlashing, it commends the Draft Order's inclusion of an admonition to utilities that they “may not use advanced notice requirements to impose quasi-application or quasi-pre-approval requirements, such as requiring engineering studies.”<sup>12</sup>

**Establishing Processes for a “Complete” Application** – The Commission's attachment timeline is meaningless if new attachers cannot even get a utility to agree that the threshold action in the process, having the utility deem an application complete, is achieved. Many stakeholders identified the “complete application” issue as a major barrier, and the Draft Order properly acknowledges that new attachers may face delays as a result of being unable to determine what information needs to be included in an application or because the utility drags its feet in examining whether an application is complete.<sup>13</sup> The Draft Order therefore includes new application completeness and timing rules for OTMR and non-OTMR processes, based on the BDAC's recommended rule.<sup>14</sup>

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<sup>7</sup> *Id.* at Appendix A, 47 C.F.R. § 1.1412(j).

<sup>8</sup> *Id.* at para. 68.

<sup>9</sup> *See, e.g.*, FBA FNPRM Comments at 2-6; FBA FNPRM Reply Comments at 2-6.

<sup>10</sup> Draft Order at para. 107.

<sup>11</sup> *Id.* at Appendix A, 47 C.F.R. § 1.1416.

<sup>12</sup> *Id.* at para. 111.

<sup>13</sup> *Id.* at paras. 54, 73.

<sup>14</sup> *Id.* at Appendix A, 47 C.F.R. §§ 1.1412(c)(1), 1.1412(j)(1). *See* BDAC Report at 32-33.

The FBA believes these rules will help reduce uncertainty and expedite the processing of applications.

**Requiring an Offer of Joint Surveys** – The attachment process can be expedited by increasing cooperation among utilities and new and existing attachers. The BDAC found that one way to achieve this goal is to require coordination in the survey process, which “would speed up the application process and lower the cost of attachments.”<sup>15</sup> The Draft Order agrees that joint surveys would make the “process more efficient and transparent,”<sup>16</sup> and it adopts joint survey requirements both for OTMR<sup>17</sup> and non-OTMR<sup>18</sup> processes.

**Improving the Viability of the Self-Help Make-Ready Remedy for Attachers Not Electing OTMR** – The Draft Order recognizes that the existing self-help remedy,<sup>19</sup> which could be invoked if the make-ready process extends past the deadline, has not been effective.<sup>20</sup> The BDAC sought to fix the flaws with the self-help remedy by first making the requesting attacher responsible for overseeing the make-ready work by the existing attachers and then permitting the requesting attacher to immediately undertake make-ready using its own contractor if the existing attacher fails to complete its work.<sup>21</sup> The Draft Order generally follows the BDAC recommendation, although it establishes a different, albeit not unreasonable, approved-contractor process.<sup>22</sup> Moreover, the Draft Order extends the self-help remedy to work above the communications space.<sup>23</sup> The FBA believes these new rules should prove beneficial, first to provide an additional incentive for existing attachers to complete make-ready on time and then to enable the new attacher to expeditiously begin and complete work.

The FBA also supports the Draft Order’s clarification that “new attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment” and that “a utility cannot delay

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<sup>15</sup> BDAC Report at 29.

<sup>16</sup> Draft Order at para. 76.

<sup>17</sup> *Id.* at Appendix A, 47 C.F.R. § 1.1412(j)(3).

<sup>18</sup> *Id.* at Appendix A, 47 C.F.R. § 1.1412(c)(3).

<sup>19</sup> 47 C.F.R. § 1.1420(e)(v).

<sup>20</sup> Draft Order at para. 90.

<sup>21</sup> *See* BDAC Report at 34-43.

<sup>22</sup> Draft Order at Appendix A, 47 C.F.R. § 1.1412(i).

<sup>23</sup> *Id.* at 47 C.F.R. § 1.1413(a).

completion of make-ready while it attempts to identify or collect from the party” responsible for the pre-existing violation.<sup>24</sup>

In closing, the FBA believes the rules proposed by the Draft Order get to the heart of many of the most significant problems in the the pole attachment process. By adopting them at the upcoming meeting, the Commission will accelerate network upgrades and new deployments in areas throughout the country.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission’s rules.<sup>25</sup>



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<sup>24</sup> *Id.* at paras. 112-113.

<sup>25</sup> 47 C.F.R. § 1.1206.